

PORTFOLIO COMMITTEE :

**INVESTMENT, INFRASTRUCTURE
& TOURISM**

Chairperson :

Cllr C Lerm

Committee Members :

**Cllr M Nomatiti, Ald R de Coning,
Cllrs M Sihlahla & V Bandeza**

INVESTMENT, INFRASTRUCTURE & TOURISM PORTFOLIO COMMITTEE

8 November 2023

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**AGENDA of the
Portfolio Committee : Investment & Infrastructure
4 October 2023
(Also the agenda for the Mayoral Committee Meeting : 11 October 2023)**

1.

A PORTION OF ERF 249 AND A PORTION OF ERF 832 HERMANUS (KNOWN AS THE HERMANUS MARKET SQUARE SITUATED IN MARKET SQUARE STREET): REQUEST FOR EXEMPTION FROM RENTAL ESCALATION FOR THE 2023/2024 FINANCIAL YEAR, COTTON4U4EVER (PTY) LTD

**A Le Roux
28 August 2023**

Manager: Property Administration

(028) 316-5623

1. Executive Summary

The purpose of the report is to request Council to approve an exemption to Cotton4U4Ever (Pty) Ltd, hereinafter referred to as “the Applicant”, from the escalation of rental for the 2023/2024 financial year.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Promotion of tourism, economic and social development

4. Delegated Authority

None

5. Legal Requirements

- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

6. Background/Discussion/Evaluation/Conclusion

Background

The Overstrand Municipality called for tenders for the leasing of the Hermanus Market Square Stalls situated in Market Square Street, Hermanus for the purposes of leasing, managing, subleasing and maintaining 34 stalls as well as maintaining the on-site ablution facilities and passages between the stalls, situated on a portion of erven 832 and 249 Hermanus at payment of an initial rental amount of R76,840.00 (SEVENTY SIX THOUSAND EIGHT

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HUNDRED AND FORTY RAND) (VAT included), which amounts to R2,260.00 (TWO THOUSAND AND SIXTY RAND) (VAT included) per stall. The tender was subsequently awarded to Cotton4U4Ever (Pty) Ltd and the long-term lease was approved by the delegated authority.

A lease agreement was entered into which commenced on 1 October 2020 and will expire on 31 August 2030.

The rental payable from commencement of the lease until now is:

PERIOD	RENTAL VAT INCL.	RENTAL VAT EXCL.	ESCALATION %
01/10/2020 – 28/02/2021	R76,840.00	R66,817.39	
01/03/2021 – 30/06/2021	R57,630.00	R50,113.04	*Rebate approved
01/07/2021 – 31/08/2021	R60,012.04	R52,184.38	*Rebate approved
01/09/2021 – 30/06/2022	R79,222.04	R68,888.73	3,1%
01/07/2022 – 30/06/2023	R84,371.48	R73,366.50	6,5%
01/07/2023 – 30/06/2024	R89,686.88	R77,988.59	6,3%

*The rebate was approved by Council on 31 March 2021 when the following decision was taken:

“RESOLVED (SUPPORTED BY 25 COUNCILLORS):

that a partial rebate in the rental payable by COTTON4U4EVER (Pty) Ltd to an amount of R565.00 (FIVE HUNDRED AND SIXTY FIVE RAND) (VAT included) per stall per month for a period of 6 (SIX) months from 1 March 2021, be approved.”

Discussion

The Applicant requested an exemption from the escalation on rental for the 2023/2024 financial year and provided the following motivation:

“Since the commencement of the agreement all the stalls are successfully occupied with tenants paying rental promptly. Many improvements and upgrades were made at the Market Square to attract visitors and tourist to support the local entrepreneurs at the Market Square Stalls who are desperately trying to make a living, supporting their families, and contributing to our local economy.

As my rental amount increases year after year, I must increase the rental amount of each stall every year to cover the cost and be able to fulfil the responsibilities of my lease agreement with the Overstrand Municipality. I am

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of great concern that the individual stall rental is soon going to become unaffordable for the tenants at the Market Square Stalls.

To cover the cost of the management, maintenance, and on-site ablution facilities I am subletting the stalls for R5250pm (Including VAT). This cost the tenants R583,2 per month and they will end up paying over R1000m² per month in a matter of a few years. If I must increase their rent again by 8% this year, they will pay R630m². This is an extremely high rental for a commercial premises especially taking it in consideration that the Market Square Stalls is only a Market that is intended for the sole purpose of leasing the stalls out to entrepreneurs.

My lease agreement period of 9 (nine) years and 11(eleven) months will make it impossible and simply unaffordable for these local entrepreneurs to keep up with the rental escalations. If the tenants cannot pay for their stalls, I will not be able to pay my rental account for the Market Square Stalls. This will force me to breach my contract and ruin me financially all due to the annual escalation clause in my lease agreement that can be resolved as I am bringing it under your urgent attention that we must act now.”

Unfortunately a permanent exemption from the annual escalation for the remainder of the lease agreement cannot be considered as this was a stipulation in the tender document and should the escalation clause be removed from the agreement now it implies that the Municipality was not fair and transparent in the tender process as the fact that there will be no escalation on the rental amount makes a big difference and could have lead to more tenders being received.

Paragraph 40 of the Administration of Immovable Property Policy of the Overstrand Municipality further stipulates as follows: *“Rental, except where it is decided otherwise by the Municipality, shall escalate on the 1st of July every year, by a percentage fixed in accordance with the prevailing consumer price index (all items).”*

As all the lease agreements for immovable property have an escalation clause included the various lessees will more than likely also request that the escalation clause be removed from their lease agreement which will lead to a tremendous loss of income for the Municipality. This will have the further effect that rental amounts will not be market related as required by legislation.

The escalation percentage for 2023/2024 is 6,3% with effect from 1 July 2023. Should the exemption be approved the Applicant will pay R5,315.40 (FIVE THOUSAND THREE HUNDRED AND FIFTEEN RAND AND FORTY CENTS) (VAT Included) less per month and an amount of R63,784.80 (SIXTY-THREE THOUSAND SEVEN HUNDRED AND EIGHTY-FOUR RAND AND EIGHTY

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CENTS) (VAT Included) less for the 2023/2024 financial year. See illustration below:

	2022/2023	Escalation amount	2023/2024
Monthly rental	R84,371.48	R5,315.40	R89,686.88
Monthly rental per stall	R2,481.51		R2,637.85
Total for year	R1,012,457.76	R63,784.80	R1,076,242.56

Taking the above into consideration as well as the economic climate we are currently in, the request for an exemption from the annual escalation on the rental amount for the 2023/2024 financial year to assist the Applicant and her tenants to an extent will be supported by Administration.

However, the following must be mentioned:

1. The Municipal annual escalation is linked to CPI which has never in the past been more than 7%, hence the Applicant should reconsider the 8% increase in rental she charges the sub-lessees.
2. The Municipality will request the audited financial statements of the business to ensure that the lease is still viable and to obtain more clarity regarding the actual expenses of the Applicant. This is mainly as the calculated monthly rental the Applicant should/could have received for the 2022/2023 is R178,500.0 per month (VAT included) (according to the Applicant the sub-lessee pays R5,250.00 per month). The rental payable to the Municipality for the 2022/2023 financial year was R84,371.48 per month (VAT included). This leaves a monthly difference of R94,128.52 per month (VAT included) for the cost of the management, maintenance, and on-site ablution facilities on the Property.

Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following paragraphs of the Administration of Immovable Property Policy are applicable:

Paragraph 40: “Rental, except where it is decided otherwise by the Municipality, shall escalate on the 1st of July every year, by a percentage fixed in accordance with the prevailing consumer price index (all items).”

This matter has already been discussed above in the report.

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Conclusion

Taking the above into consideration, it is recommended that exemption for the escalation of the rental amount for the 2023/2024 financial year be approved.

7. Financial Implications

Should the exemption be approved the Municipality will receive R5,315.40 (FIVE THOUSAND THREE HUNDRED AND FIFTEEN RAND AND FORTY CENTS) (VAT Included) less per month for the 2023/2024 financial year.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A: Locality Map

RECOMMENDATION TO THE COUNCIL:

that an exemption to COTTON4U4EVER (Pty) Ltd from the escalation on the rental amount for the 2023/2024 financial year, **be approved.**

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	20 NOVEMBER 2023
TARGET DATE TO INFORM APPLICANT :	20 NOVEMBER 2023
TARGET DATE TO INFORM OBJECTOR :	N/A

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
8 November 2023
(Also the Agenda for the Mayoral Committee Meeting : 15 November 2023)**

1.

A PORTION OF ERF 249 AND A PORTION OF ERF 832 HERMANUS (KNOWN AS THE HERMANUS MARKET SQUARE SITUATED IN MARKET SQUARE STREET): REQUEST FOR EXEMPTION FROM RENTAL ESCALATION FOR THE 2023/2024 FINANCIAL YEAR, COTTON4U4EVER (PTY) LTD

**A Le Roux
28 August 2023**

Manager: Property Administration

(028) 316-5623

THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE PORTFOLIO COMMITTEE ON 8 NOVEMBER 2023, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

that the clause in the contract regarding the escalation percentage, **be honoured.**

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

13 DECEMBER 2023

TARGET DATE TO INFORM APPLICANT :

13 DECEMBER 2023

TARGET DATE TO INFORM OBJECTOR :

N/A

